UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

TESTIMONY OF
GARY S. GUZY
GENERAL COUNSEL FOR
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
U. S. SENATE

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Good afternoon, Mr. Chairman and members of the Committee. I am Gary Guzy, General Counsel for the U.S. Environmental Protection Agency (EPA). Thank you for your invitation to appear here today to talk to you about something of great importance to me personally and to the people of this nation: the Administration's unprecedented efforts to ensure that the Florida Everglades has clean, abundant water to ensure environmental and human needs, and the Administration's emphasis on the importance of EPA's role under the Clean Water Act in ensuring that protecting water quality is fully integrated into each step of the restoration efforts.

The efforts to protect the Everglades are a part of Florida's rich history. Marjory Stoneman Douglas, in her autobiography, *Voice of the River*, describes the efforts of Congresswoman Ruth Bryan Owen, who actively argued at committee hearings against the commonly-held notion of the time that the Everglades was just a swamp filled with snakes and mosquitoes. She argued that Congress should create the Everglades National Park.

And Congress did create the Everglades National Park. But that's not the end of the story, and here we sit today to urge the Committee to once again exert its leadership and take the steps necessary to preserve and protect this national treasure.

Yes, the Everglades is a major source of fresh water for South Florida. Yes, the Everglades is the largest wetland east of the Mississippi River. And yes, the Everglades is an economic boon to a State that depends on tourism. But the Everglades is more than these things; it is a historical treasure that is only venerated through its preservation.

PAST EFFORTS AND RECENT PROGRESS

During the second half of the last century, the existing Central and Southern Florida Project was built to help meet needs for flood control and water supply at that time. But the explosive growth since then has far exceeded the capacity of the current system to meet even these needs, and has contributed to the ongoing decline in the Everglades ecosystem. The design and operation of the current system, while very efficient at draining excess water, severely limits our capability to store excess water when it becomes available (in the wet season) so we will have it when it is needed (in the dry season). Moreover, it is important to remember that the system was designed for flood control and for water supply purposes. Water quality was not a consideration at the time.

The Comprehensive Everglades Restoration Plan was submitted to the Congress by the Vice President of the United States for the U.S. Army Corps of Engineers nearly a year ago (July 1999). The Plan, which was carefully developed with the full involvement of EPA and other Federal/State agencies, lays out an ambitious Federal/State joint venture to restore water flows to the Everglades ecosystem while

providing flood protection and adequate freshwater supplies to the agricultural industry and to the growing population of South Florida. The Comprehensive Everglades Restoration Plan represents a fundamental change in philosophy – a commitment to a sustainable future in which we learn to balance the water supply needs of the natural systems – both freshwater and marine, with the needs of the urban and agricultural components of the Everglades systems.

More recently, EPA worked with its Federal partners to shape the Administration's proposed legislation for the Water Resources Development Act of 2000 (WRDA), which would authorize the Central and Southern Florida Project in accordance with the recommendations set forth in the Comprehensive Everglades Restoration Plan (CERP). The authorization would allow the Corps and its Federal/State partners, including EPA, to implement the Comprehensive Everglades Restoration Plan, which, in concert with other proposed and ongoing restoration efforts, would "get the water right" by delivering fresh water in the right quantity, of the right quality, and with our best estimate of the right timing and the right distribution to achieve the desired results in the Everglades ecosystem, including downstream coastal communities all the way to the living coral reefs of the Florida Keys.

EPA recommends the passage of the proposed Everglades legislation the Administration provided to Congress for authorization in the Water Resources Development Act 2000. Among EPA's priorities for the proposal is to ensure that the legislation clearly amends the current and future project features and purposes for the

Central and Southern Florida project to restore, preserve, and protect the South Florida ecosystem.

We also worked closely with our Federal partners to shape the Everglades proposal so that it identifies, and fully addresses, the goal of water quality improvement for the ecosystem. EPA supports the Army Corps of Engineers' request that project features needed to provide water of adequate quality be included to help in restoring, protecting, and preserving the South Florida ecosystem. EPA recommends that in doing this, applicable federal water quality standards, applicable federally-approved water quality standards developed by the state or Indian tribes, and plans to implement the standards should be taken into account. The Administration's proposed legislation includes specific language in the assurances section and in relation to future regulations to ensure that water quality needs of the ecosystem are met.

We believe that the Administration's proposed bill builds on the successes that have already been achieved and serves as an appropriate mandate for future efforts. For example, under the Everglades Forever Act (EFA), which built on the commitments in the 1991 settlement agreement with the South Florida Water Management District and the State, the implementation of best management practices in the Everglades Agricultural Area have achieved a four year cumulative phosphorus load reduction of 54 percent in waters discharged into the Everglades Water Conservation Areas, as reported in Chapter 5 of the 2000 Everglades Consolidated Report. Under the EFA and the settlement agreement, the state also is constructing Stormwater Treatment Areas to filter the farm runoff further. The construction of the six STAs totaling 44,000 acres has

begun and the two operating STAs have greatly exceeded their design goals. It is important to note that these commitments by the state were a baseline assumption in the development of the CERP, and that the state's future cost of meeting the water quality goals of these measures will not add to the total costs of the CERP. Another example is the completion of the Administration's important acquisition of the Talisman Sugar Plantation from willing sellers in the Everglades Agricultural Area, which involves more than 51,000 acres, critical new restoration lands in the heart of the system.

The Administration's proposed bill also requires involvement of EPA in the development of programmatic and project-specific regulations. Due to our unique ecosystem-wide perspective, we believe EPA can contribute to the success of the Comprehensive Everglades Restoration Plan and evaluation of its progress. We strongly encourage Congress to endorse this integrated approach.

I would now like to talk to you about some of the specific challenges that remain in restoring the magnificent Everglades ecosystem, as well as EPA's recommendations for how WRDA 2000 can best provide the sound legislative underpinnings we need for this unprecedented effort.

REMAINING CHALLENGES AND FUTURE DIRECTIONS

As noted earlier, the Administration's Comprehensive Everglades Restoration Plan offers a broad, farsighted approach, which is designed to increase water supplies for the region so urban and other users continue to get their fair share, while the natural

system finally gets its fair share to restore *and* improve the condition of water quality throughout the Everglades ecosystem. Throughout the design, construction, and operation phases of the project, EPA intends to focus its efforts and energies on ensuring that features of the plan will fully comply with all Federal, State, and Tribal water quality standards, as well as all other applicable provisions of the Clean Water Act and Safe Drinking Water Act. Now I'd like to highlight how EPA's involvement in certain features of the plan will help promote water quality and contribute to restoration of the overall integrity of the Everglades ecosystem.

Stormwater Treatment Areas (STAs) and Water Storage Areas (WSAs)

The Comprehensive Everglades Restoration Plan includes proposals to construct 36,000 acres of wetlands to treat polluted runoff from urban and agricultural lands. These Stormwater Treatment Areas (STAs) will be located throughout South Florida, and will enable us to use the natural filtering capability offered by wetlands in an enhanced manner to treat and improve both water quality *and*, at the same time, contribute to the restoration of the health of the Everglades ecosystem.

The Comprehensive Everglades Restoration Plan also calls for construction of 181,000 acres of Water Storage Areas (WSAs), 171,000 of which will allow us to capture excess fresh water flows that now are drained rapidly to the Atlantic Ocean and the Gulf of Mexico. This valuable water, which currently is being "lost to tide," will be captured and used to provide much-needed water for restoration of the Everglades ecosystem and to enhance potable water supplies for the people of South Florida. As

with the STAs, the WSAs will render major water quality benefits to both inland and coastal waters *and* benefits to the wetland habitat of the Everglades ecosystem. In addition to the STAs and WSAs, it also will be critical to ensure the acquisition of the East Coast Buffer Area because of the continued threat of development that can affect the Everglades.

Aquifer Storage and Recovery (ASR) Facilities

Construction of regional Aquifer Storage and Recovery (ASR) facilities is another important component of the Comprehensive Everglades Restoration Plan. When completed, the ASR facilities are also intended to store water during the wet season -- freshwater flows that are currently lost to tide. ASR facilities will store these waters in the upper Floridan Aquifer for recovery in dry seasons -- for use both to restore the ecological integrity of the Everglades ecosystem *and* to enhance future water supplies for urban and agricultural purposes in South Florida.

WRDA 1999 authorized two large-scale pilot projects at Lake Okeechobee and Palm Beach County, and EPA is now involved with these pilot efforts in the start-up phase. EPA recognizes that the ASR approach is bold and entails some technical and regulatory uncertainties; however, we support this approach in concept and are fully committed to ensuring that these facilities will function in ways that are fully protective of South Florida's drinking water supplies and surface water quality. EPA is working with other Federal and state partners to demonstrate and assess the efficacy of ASRs. Regardless of the ultimate feasibility of ASR facilities, the Administration remains

committed to finding the same amount of water storage through other means, if necessary. Again, I believe that the demonstrated commitment to adaptive assessment that this program has displayed will incorporate future adjustments, as needed.

Comprehensive Integrated Water Quality Plan

Under the Comprehensive Everglades Restoration Plan, EPA and Florida Department of Environmental Protection (FDEP) will share the lead in developing a Comprehensive Integrated Water Quality Plan. This plan will evaluate water quality standards and criteria from an ecosystem restoration perspective. It will also make recommendations for integrating existing and future water quality restoration targets for South Florida waterbodies into future planning, design, construction, and operation activities in ways that optimize water quality in inland areas, estuaries, and nearshore coastal waters. The plan also will lead to recommendations regarding water quality programs, including setting priorities for developing both water quality standards and pollution load reduction goals.

Other Activities Related to Water Quality

In addition to the activities associated with the Comprehensive Everglades Restoration Plan, which would be authorized in WRDA 2000, EPA is involved in a number of related activities and projects aimed at protecting and restoring water quality and ecosystem integrity in the Everglades. While time does not permit me to fully

describe these efforts, I do want to call the Committee's attention to some of the most important activities and the purpose of each:

- ***Florida Keys Water Quality Protection Program***: EPA has been working with the State of Florida in conjunction with the National Oceanic and Atmospheric Administration (NOAA) to plan and implement priority corrective actions and compliance schedules to address both point and non-point sources of pollution in order to restore and maintain the chemical, physical, and biological integrity of the Florida Keys National Marine Sanctuary.
- ***Improving the Wetlands Regulatory Process in Southwest Florida***: EPA has been actively involved in assisting the Army Corps of Engineers in finalizing a Programmatic Environmental Impact Statement (PEIS), intended to improve the section 404 regulatory decision-making process in Southwest Florida.
- ***Mercury***: EPA, along with United States Geological Survey (USGS), the Florida Department of Environmental Protection and the South Florida Water Management District, and NOAA is actively engaged in a comprehensive mercury research program to address mercury contamination in the Everglades. EPA also is working with the State of Florida to develop a pilot mercury TMDL for a parcel of the Everglades ecosystem known as Water Conservation Area 3A. This effort is designed to determine the maximum amount of mercury that can enter the Area each day and still enable the waters to meet water quality standards.

- ***Phosphorus***: phosphorus is still one of the chief pollutants that threatens aquatic life and restoration of the Everglades ecosystem. In May 1999, EPA approved stringent new water quality standards for the Miccosukee Reservation in a portion of the Everglades ecosystem, which, for the first time ever under the Clean Water Act, set a specific protective numerical standard for the Everglades for phosphorus. This protective standard sets a benchmark for how much phosphorus the ecosystem can handle before adverse impacts to native aquatic life begin to occur. Under the Everglades Forever Act, Florida is now actively engaged in developing a water quality standard for phosphorus for other portions of the Everglades ecosystem and has planned its first Everglades technical workshop on May 17th. The State recently committed to accelerate this process and to adopt a scientifically-defensible standard by no later than December 31, 2002. EPA is providing technical assistance to the State to help meet this ambitious schedule.

THE IMPORTANCE OF WRDA TO THE FUTURE HEALTH OF THE EVERGLADES ECOSYSTEM

EPA fully supports the Administration's proposed Everglades legislation that includes specific provisions to assure that the benefits of the project are achieved and maintained for the life of the authorization. We have worked with our Federal partners to ensure that the WRDA legislation specifies that implementation of the Central and Southern Florida Project, as amended by the Comprehensive Everglades Restoration

Plan, must occur in a manner that ensures that the anticipated benefits to the natural system and the human environment, including the proper quantity, quality, timing and distribution of water, are achieved and maintained.

EPA also believes that WRDA 2000 must provide for implementation of the Comprehensive Everglades Restoration Plan in its totality in order to ensure that the desired benefits are ultimately achieved. While the many individual projects needed to implement the Plan in its entirety will be phased in over time, EPA believes that WRDA 2000 needs to include a framework that guarantees continuity for completing these highly interconnected and interdependent project features over time. Our joint efforts in the Everglades represent an unprecedented, holistic approach to ecosystem restoration, and we, as a nation, must commit at the outset to see this effort through to its desired end.

The Administration's proposal contains important legislative assurances language that guarantees the delivery of sufficient quantities of clean, fresh water and ensures that the many individual project works and features will be designed and managed to appropriately deliver the water. The proposal also formalizes EPA's consultative role in ongoing decisions regarding projects and programs to ensure that the natural system and the human environment receive the water quality benefits intended as the Comprehensive Everglades Restoration Plan is implemented and incorporated into the Central and Southern Florida Project. EPA regards these safeguards as essential components of WRDA 2000, and strongly supports their inclusion in the authorization of this legislation.

CLOSING

Congress has played its part in the past–creating the Everglades National Park and providing funding for the previous restoration work. There now is broad recognition that the Everglades are a national treasure and that they are severely threatened and we all must take action to preserve them for future generations. By authorizing the Comprehensive Everglades Restoration Plan as part of WRDA 2000, Congress can again be part of this important history.

Mr. Chairman, that concludes my statement. Thank you for the opportunity to address the Committee today. I will be pleased to answer any questions you may have.

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